

AMENDED IN SENATE AUGUST 24, 2012  
AMENDED IN SENATE SEPTEMBER 1, 2011  
AMENDED IN SENATE JUNE 20, 2011  
AMENDED IN ASSEMBLY APRIL 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1062**

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**Introduced by Assembly Member Dickinson**

February 18, 2011

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An act to amend Section ~~1294~~ of the Code of Civil Procedure, 15657 of the Welfare and Institutions Code, relating to ~~arbitration~~ public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1062, as amended, Dickinson. ~~Arbitration: appeals. Public social services.~~

*Existing law provides for the award of attorney's fees and costs to, and the recovery of damages by, a plaintiff, when it is proven by clear and convincing evidence that a defendant is liable for physical abuse or neglect of an elder or dependent adult and the defendant has also been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.*

*This bill would revise these provisions to change the standard of proof to a preponderance of the evidence.*

*Existing law authorizes a plaintiff to recover damages for the sake of example and by way of punishing the defendant in addition to the actual damages. Existing law provides that an employer is not liable for punitive damages based on the acts of an employee unless certain*

*conditions are satisfied. Existing law requires that these conditions regarding the imposition of punitive damages on an employer based upon the acts of an employee be satisfied before any damages or attorney's fees permitted due to liability for physical abuse or neglect of an elder or dependent adult are authorized to be imposed against an employer.*

*This bill would instead require that these conditions regarding the imposition of punitive damages on an employer be satisfied before any punitive damages may be imposed against an employer found liable for physical abuse, as defined, or neglect, as defined. This bill would state that these provisions are not intended to affect the specified standard of proof for punitive damages.*

~~Existing law specifies those types of orders and judgments from which an appeal may be taken, including, an order dismissing or denying a petition to compel arbitration.~~

~~This bill would limit that basis from which an appeal may be taken to an order dismissing or denying a petition to compel arbitration if the party who opposed the petition to arbitrate is 65 years of age or older or a dependent adult, as defined.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 15657 of the Welfare and Institutions
- 2     Code is amended to read:
- 3     15657. (a) Where it is proven by ~~clear and convincing~~ a
- 4     preponderance of the evidence that a defendant is liable for
- 5     physical abuse as defined in Section 15610.63, or neglect as defined
- 6     in Section 15610.57, and that the defendant has been guilty of
- 7     recklessness, oppression, fraud, or malice in the commission of
- 8     this abuse, the following shall apply, in addition to all other
- 9     remedies otherwise provided by law:
- 10    ~~(a)~~
- 11    (1) The court shall award to the plaintiff reasonable attorney's
- 12    fees and costs. ~~The term "costs"~~ "Costs" includes, but is not
- 13    limited to, reasonable fees for the services of a conservator, if any,
- 14    devoted to the litigation of a claim brought under this article.
- 15    ~~(b)~~

(2) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(e)

(3) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any *punitive damages or attorney's fees permitted under this section may be imposed against an employer. may be imposed against an employer found liable for physical abuse, as defined by Section 15610.63, or neglect, as defined by Section 15610.57. This subdivision shall not apply to the recovery of compensatory damages or the award of attorney's fees and costs.*

*(b) The changes made to this section by the act adding this subdivision are not intended to affect the standard of proof for punitive damages pursuant to Section 3294 of the Civil Code.*

~~SECTION 1. Section 1294 of the Code of Civil Procedure is amended to read:~~

~~1294. An aggrieved party may appeal from any of the following:~~

~~(a) An order dismissing or denying a petition to compel arbitration, unless the party who opposed the petition to arbitrate the civil action in court is 65 years of age or older or a dependent adult, as defined in Section 15610.23 of the Welfare and Institutions Code.~~

~~(b) An order dismissing a petition to confirm, correct, or vacate an award.~~

~~(c) An order vacating an award unless a rehearing in arbitration is ordered.~~

~~(d) A judgment entered pursuant to this title.~~

~~(e) A special order after final judgment.~~